

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

MFA.No. 425 of 2002()

OPMV.329/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

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APPELLANT: APPELLANT/PETITIONER:

DIVAKARAN, S/O. AYYENKUTTY,
KANDATHIL PARAMBIL, ANAPARAMBAL VADAKKU,
THALAVADY P.O., ALAPPUZHA.

BY ADV. SRI.BEPIN VIJAYAN

RESPONDENTS: RESPONDENTS/RESPONDENTS:

1. ABDUL MAJEED, CHOONATTUTHEKKETHIL,
CHEPPADU, MUTHUKULAM, ALAPPUZHA.
2. AJIKUMAR, S/O. ANANDAKRISHNAN PILLAI,
PUTHOOR VEEDU, WARD NO.XII, AMBALAPUZHA.
3. THE NATIONAL INSURANCE CO.LTD.,
NEAR Y.M.C.A., ALAPPUZHA.

R3 BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 09/03/2007, THE COURT ON SAME DAY DELIVERED THE
FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.

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Dated this the 9th day of March, 2007

JUDGMENT

Raman, J.

Appellant was the claimant, who sustained injuries in a motor accident. He was hit by an autorickshaw insured with the 3rd respondent-Insurance Company. It was found that the accident occurred as a result of the negligence on the part of the driver of the autorickshaw. The tribunal quantified the compensation. The income of the appellant was fixed at Rs.1,500/-, in the absence of any cogent evidence regarding his income, though his contention was that he is a coolie receiving an amount of Rs.2,500/-. An amount of Rs.5,000/- was awarded towards loss of earning power, an amount of Rs.10,000/- was awarded towards permanent disability, an amount of Rs.5,000/- was awarded towards pain and suffering and an amount of Rs.2,500/- was also awarded towards treatment charges, medical expenses,

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bystanders expenses etc. In all an amount of Rs.30,100/- was awarded with interest at 9% per annum.

2. The appellant would contend that the Tribunal ought to have fixed the income at Rs.2,500/- as claimed by him. We are unable to accept this contention, since there was no acceptable evidence to prove the income of the appellant. In such circumstances, the amount of Rs.1,500/- as his income fixed by the Tribunal is correct. The next contention of the appellant is that he was awarded only an amount of Rs.10,000/- towards permanent disability, even though the Doctor certified 15% disability. It has to be noticed that the Tribunal has given global sum of Rs.10,000/- towards permanent disability, since the disability has not proved to have resulted in any loss of earning capacity. The Doctor is not examined in this case. The injury sustained by him is fracture to the right hand and to the collar

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bone. As there is no loss of earning capacity the Tribunal has awarded a global compensation. Having due regard to the facts and circumstances of the case and in view of the medical certificate produced, we think that an amount of Rs.10,000/- more can be awarded under this head. The Tribunal has awarded reasonable compensation under other heads.

3. In the result, the award is modified. Over and above the amount already awarded by the Tribunal the appellant will be entitled for an amount of Rs.10,000/- more, which will carry interest at 7% from the date of petition till realisation.

Appeal is disposed of as above.

P . R . RAMAN ,
Judge .

ANTONY DOMINIC ,
Judge .

kcv.

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P.R.RAMAN &
ANTONY DOMINIC, JJ.

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JUDGMENT

9TH MARCH, 2007